IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 700 (M/S) of 2003

1. Keshar Singh S/o Late Rudra Singh,
   R/o Village Lachhampur, Patti-Haldukhata
   Tehsil Kothdwara,
   District- Pauri Garhwal.
2. Laxman Singh S/o Late Rudra Singh,
   R/o Village lachhampur, Patti- Haldukhata,
   Tehsil Kothdwara,
   District- Pauri Garhwal. .....Petitioners

Vs.

1. Smt. Bhagirathi Devi
   W/o Late Rudra Singh
   R/o Village Lachhampur, Patti- haldukhata,
   Tehsil- Kothdwara,
   District- Pauri Garhwal.
2. Devendra Singh S/o Late Rudra Singh,
   R/o Village Lachhampur, Patti- Haldukhata,
   Tehsil- Kothdwara,
   District- Pauri Garhwal.
3. Additional Commissioner Garhwal Mandal,
   Pauri Garhwal.
4. Assistant Collector- Ist Class Kothdwar.
5. Tehsildar Kotdwar, Pauri Garhwal. .....Respondents

Sri R.K. Shah learned counsel for the petitioners.
Sri N.S. Negi learned counsel for the respondent No.s 1 and 2.
Sri R.C. Arya learned Standing counsel respondent Nos. 3 to 5.

Dated: 04-09-2006

Hon'ble B.S. Verma, J.

Heard Sri R.K. Shah learned counsel for the petitioners and Sri N.S. Negi learned counsel for the respondent No. 1 and 2 and Sri R.C. Arya learned Standing counsel for the respondents No. 3 to 5.

2. The present writ petition has been filed by the petitioners for quashing the impugned orders dated 16-5-2002 and 31-3-2000 respectively passed by learned Additional Commissioner (Administration) Garhwal Division and Assistant Collector First Class Kotdwar.

3. Brief facts of the case giving to the present writ petition are that the respondent Nos. 1 and 2 have filed the mutation application under Section 34 and 35 of L. R. Act 1901 before the Tehsildar on the basis of will dated 14-11-1996 executed by Sri Rudra Singh (Deceased) in their favour, the petitioners have filed objections against the mutation application alleging therein that the property bequeathed by will Sri Rudra Singh in favour of Smt. Bhagirathi Devi and Devendra Singh was the ancestral property. The petitioners have challenged the impugned orders on the ground that they have filed objections before the Tehsildar against the mutation application inter-alia on the grounds that the property was ancestral property of Rudra Singh and Kesar Singh were borne prior to the enforcement of U.P.Z.A. and L.R. Act in village concerned. According to the petitioners Z.A. and L.R. Act was enforced in Garhwal Region in July 1966(1374 Fasli).

4. On 30-6-1999, the mutation application of the respondent Nos. 1 and 2 was rejected by Tehsildar Kotdwar. Aggrieved by the order of the Tehsildar, the respondent Nos. 1 and 2 preferred an appeal before Assistant Collector Kodwar, Garhwal region. The appeal was registered as 9/1999-2000 Bhagirathi Devi and another Vs. Kesar Singh and another and the appeal was allowed vide order dated 31-3-2000 by Assistant Collector, Kotdwar and it was ordered that the respondent Nos. 1 and 2 be recorded in the revenue records over the land in dispute.

5. Aggrieved by the order of the learned Assistant Collector, the petitioners have preferred a revision before the Additional Commissioner, Pauri Garhwal, which was registered as 11/1999-2000 Kesar Singh Vs. Smt. Bhagirathi Devi and another and it was dismissed on 16-5-2002 on the ground that Sri Rudra Singh deceased was recorded as tenure holder and the petitioners never perfected their right and title on the disputed land. It is well settled that the mutation proceedings is summary in nature. The petitioners have alternate remedy to file the regular suit before the competent Court for declaration of their rights under Section 40 (A) of the U.P. Land Revenue Act, which reads as under:-

"Savings as to title suits- No order passed under Section 33, Section 34, section 39, section 40, section 41, or section 54 shall

bar any suit in a competent Court for relief on the basis of a right in a holding"

6. A perusal of the above provision in Section 40-A would show that a person aggrieved by the order passed in the mutation proceedings under Section 34/35 of the U.P. Land Revenue Act can challenge it on regular side and judgment of Court shall over-ride the order passed in mutation proceedings. In the present case, undisputebly alternative remedy to bring a suit in regular Court is available to the petitioner as provided by Section 40-A of the U.P. Land Revenue Act.

7. For the discussion aforementioned, the writ petition is devoid of merit and must fail. The petitioner's claim shall be decided in regular suit, if they so choose to file, irrespective of any finding recorded in the impugned judgments.

8. The writ petition is dismissed. No order as to costs.

(B.S. Verma,J)

Dated: 04-09-2006
M.K.